

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

v.

MASTER SHEET METAL INC.,

Respondent.

CASE NO. OSH 2007-2

ORDER NO. 239

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board ("Board") on March 21, 2007, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Janice E.C. Teramae, Esq., for Respondent, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
 - A. Whether all citation items resulting from Inspection No. 309458966, including the characterizations and penalties, are valid and proper.
 - i. Item 1a alleged HAR §12-110-2(b)(2)(B) was violated because the Respondent's disciplinary system "is not being enforced as outlined in its safety and health program. The lack of enforcement indicates that corrective action is not taken seriously by the company. This lack of enforcement, to correct unsafe working practices, exposed the employees to injuries from falls due to their not using fall protection. One employee was seriously injured in a fall." The violation was characterized as "serious." A penalty of \$875.00 was imposed.
 - ii. Item 1b the alleged that HAR §12-110-2(b)(3) was violated because "[n]o inspections were conducted of the work site

which would have detected and corrected the unsafe work practice of working on the 17 feet high roof without fall protection. The lack of inspection and corrective action exposed the employees to injuries from fall due to lack of fall protection. One employee was seriously injured in a fall." The violation was characterized as "serious."

- iii. Item 1c alleged that HAR §12-110-2(b)(4)(C) was violated because the "leadman/working foreman had not been trained to recognize hazards, maintain safety in the work area, or reinforce training on the nature of potential hazards for the other employees. He also engaged, along with the other workers, in the hazardous practice of working on the 17 feet high roof without fall protection. The lack of training and his engagement in unsafe practices encouraged the other workers to do the same thus exposing them to injuries from fall due to lack of fall protection. One employee was seriously injured in a fall." The violation was characterized as "serious."
- iv. Item 2a alleged 29 CFR 1926.451(e)(1) was violated because the "workers were using a Genie GS-1530 scissor lift, to gain access to the 17 feet high roof edge by climbing over the lift's guardrail onto the roof. This activity exposes the employees to injury from falls while climbing out of the unit and the possibility of the unit tipping over." The violation was characterized as "serious." A penalty of \$875.00 was imposed.
- v. Item 2b alleged 29 CFR 1926.451(f)(3) was violated because the "Genie GS-1530 scissor lift, used to gain access to the 17 feet high roof edge, was not inspected each day by a competent person before each shift. This activity exposes the employees to injury from falls due to potential lift malfunctions." This violation was characterized as "serious."
- vi. Item 2c alleged 29 CFR 1926.454(c)(3) was violated because the "workers were using a Genie GS-1530 scissor lift, to gain access to the 17 feet high roof edge by climbing over the lift's guardrail onto the roof. This unsafe activity exposes the employee to injury from falls while climbing out of the unit and also the possibility of the lift tipping over. These actions

indicate a need for retraining of these workers. The violation was characterized as "serious."

- vii. Item 3a alleged 29 CFR 1926.501(b)(11) was violated because the "workers on the steep pitched roof were not wearing personal fall protection. Nor were they protected by guardrail systems with toe-boards, or safety net systems. This lack of protection exposed the employees to injury from falls. One employee has been injured in a fall on this site." The violation was characterized as "serious." A penalty of \$875.00 was imposed.
- viii. Item 3b alleged 29 CFR 1926.502(d)(15) was violated because the "anchorage points, selected by the company's superintendent, were to be on angle irons showing rust and corrosion. The selection of these points was made from ground level, 17 to 25 feet below, and the capability of these points to support 5,000 pounds was not verified by close examination. This activity exposes the employees to injury from falls. Once employee has been injured in a fall on this site." The violation was characterized as "serious."
- ix. Item 3c alleged 29 CFR 1926.503(c)(3) was violated because the "workers were not using fall protection on the steep pitched roof with a ground to eave height of 17 feet. This unsafe activity exposes the employees to injury from falls. This activity is an indication that these employees are in need of retraining." The violation was characterized as "serious."

B. Respondent challenges the adequacy of the inspection which generated the citations.

C. Respondent raises as an affirmative defense unforeseeable or undiscoverable employee misconduct.

2. Any motion to dismiss or motion for summary judgment regarding the citation items must be filed with the Board on or before **April 20, 2007**. Complainant's responsive memorandum to such motion must be filed on or before **April 27, 2007**.

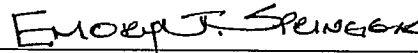
3. A hearing on any motion to dismiss or motion for summary judgment filed shall be heard on **May 2, 2007**, at 9:30 a.m., in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813.
4. The deadline for the parties' final naming of witnesses is **May 14, 2007**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with the witnesses' addresses and expected area of testimony, to the other party and to the Board by this date.
5. The discovery cutoff date is **July 17, 2007**. All other discovery, including depositions and document requests, must be completed by this date.
6. Trial in this matter is scheduled for **August 7, 2007**, at 9:30 a.m., or as soon thereafter as this case can be heard, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
7. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, March 22, 2007.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the

trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Hebert B.K. Lau, Deputy Attorney General
Janice E.C. Teramae, Esq.